Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

TOM E. HARDEN, ET AL., PETITIONERS

v.

WILLIAM E. "BUSTER" FISHER, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether under the Fourth Amendment police officers detaining an individual who poses a danger to himself or others, who is believed to be armed and suicidal, must have probable cause to detain the individual, as opposed to *Terry's* reasonable suspicion standard.

PARTIES TO THE PROCEEDINGS

Petitioners are Morrow County, Ohio Sheriff Tom E. Harden, Morrow County, Ohio Sergeant Mark Leary, and Morrow County, Ohio Deputies Steve and Molly Alexander.

Respondents are William E. "Buster" Fisher and Doris Fisher.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Morrow County, Ohio Sheriff Tom E. Harden, Morrow County, Ohio Sergeant Mark Leary, and Morrow County, Ohio Deputies Steve and Molly Alexander ("Morrow County") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is reported as *Fisher v. Harden*, 398 F.3d 837 (6th Cir. 2005), It is reproduced in the Appendix at App. 1a. The opinion of

the District Court granting petitioners' motion for summary judgment is unreported and is reproduced in the Appendix at App. 42a.

JURISDICTION

The court of appeals judgment was entered on February 25, 2005. A timely petition for rehearing was denied on June 8, 2005. Appendix at App. 80a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourth Amendment to the United States Constitution provides that: "The right of the people to be secure in their persons...against unreasonable searches and seizures..."

STATEMENT

Petitioners seek review of the ruling of the Sixth Circuit Court of Appeals which held that police officers must have probable cause to detain a suicidal person who may be armed and poses a threat to himself or others, rather than the reasonable suspicion standard required by this Court in *Terry v. Ohio*, 392 U.S. 1 (1968).

Petitioners seek review of the Sixth Circuit's ruling because it is in conflict with the rulings of this

Court in *Terry v. Ohio*, 392 U.S. 1 (1968), *Minnesota v. Dickerson*, 508 U.S. 366 (1993), *Adams v. Williams*, 407 U.S. 143 (1972), and others. It is also in conflict with the rulings of several other circuits that do not consider the mental state of the suspect when considering the reasonableness of a police officer's actions and do not require a heightened standard of care for officers dealing with suicidal individuals. See *Pena v. Leombruni*, 200 F.3d 1031 (7th Cir. 1999); *Wood v. City of Lakeland*, 203 F.3d 1288 (11th Cir. 2000); *Nelson v. County of Wright*, 162 F.3d 986 (8th Cir. 1998); *United States v. Wallace*, 889 F.2d 580 (5th Cir. 1989).

The petition arises out of a civil rights action brought by William E. "Buster" Fisher and his wife, Doris Fisher following a July 10, 2000 "Terry" stop in Morrow County, Ohio. The facts were undisputed. On July 10, 2000, Morrow County Sheriff's deputies received a 9-1-1 dispatch of a possible suicide with a man reportedly tied to the railroad tracks. The deputies proceeded to the call with lights and sirens and a rescue squad was dispatched to serve as a standby at the scene.

Deputies arrived to find a man approximately 150 to 200 yards away sitting in the middle of the tracks with a high powered rifle. The deputies knew nothing about this man. The man did not appear to be hunting. Like the deputies, two separate passers-by who reported the man to 9-1-1 thought he was attempting to commit suicide. The deputies took cover behind the cruiser and instructed the man over the PA to lay down the rifle. The man began walking toward the deputies and would not/did not lay down the rifle until the third or fourth command. As he walked closer, the deputies

observed the man bend down as if to pick something up off the tracks. As the man got closer, deputy Steve Alexander saw firearm shells or ammunition protruding from the man's clothes and did not know if the man had another firearm on him. The man repeatedly failed or refused to follow the deputies' instruction and offered no explanation for his unusual activity.

Deputy Steve Alexander was aware of other individuals committing suicide by sitting on railroad tracks and one year prior there had been a similar suicide in Morrow County, Ohio. It is undisputed that the deputies did not use any force whatsoever on Mr. Fisher. Mr. Fisher was taken off the railroad tracks, handcuffed and told to lay down for a brief period of time and was about to be searched for weapons and asked why he was sitting on the railroad tracks when he appeared to be in distress. The police officers then rendered medical assistance to the man.

On August 26, 2002, after a year of discovery in the federal case, the U.S. District Court for the Southern District of Ohio granted summary judgment to all of the Morrow County defendants, finding that the deputies acted in accordance with *Terry v. Ohio*, 392 U.S. 1 (1968) in their encounter with Buster Fisher.

Buster Fisher appealed the decision of the Southern District of Ohio to the Sixth Circuit Court of Appeals. There, the Sixth Circuit reversed the decision of the Southern District of Ohio, and held that police officers must have probable cause to detain a suicidal person even if he or she poses a threat to himself, the police officers, or others, rather than the reasonable

suspicion standard required by this Court in *Terry v. Ohio*, 392 U.S. 1 (1968). The Sixth Circuit subsequently denied a petition for rehearing en banc filed by Petitioners.

REASONS FOR GRANTING OF THE PETITION

A. The Decision in the Court Below Creates a Split Between the Circuits

The Sixth Circuit's decision creates a direct conflict with the decisions of at least four other circuits that do not consider the mental state of the suspect when considering the reasonableness of a police officer's actions in dealing with an individual who may be armed and do not require a heightened standard of care for officers dealing with suicidal individuals. Prior to the Sixth Circuit's ruling, *Wood v. City of Lakeland*, 203 F.3d 1288 (11th Cir. 2000) analyzed a police shooting of a suicidal teenager with no consideration of police failure to employ techniques for dealing with suicidal subjects. *Pena v. Leombruni*, 200 F.3d 1031 (7th Cir. 1999) found that the mental state of the subject was irrelevant to the reasonableness of an officer's actions in shooting the subject. In *Nelson v. County of Wright*, 162 F.3d 986 (8th Cir. 1998) the court did not consider the disturbed mental state of the subject where a police officer was granted qualified immunity in the shooting of a suicidal man. *United States v. Wallace*, 889 F.2d 580 (5th Cir. 1989) held that a police officer may conduct a stop and frisk of an individual when he has a reasonable suspicion that the individual is about to commit suicide and that the individual possesses a firearm, much like the Buster Fisher situation here. The Fifth District states in *Wallace* that "it would have

been poor police work indeed" for police to have left the scene after learning that the individual had a gun and was threatening suicide. *Wallace*, 889 F.2d at 528, citing *Terry*.

Wood, *Pena*, *Nelson*, and *Wallace* all correctly concluded – with appropriate citations to *Terry v. Ohio*, 392 U.S. 1 (1968), *Tennessee v. Garner*, 471 U.S. 1 (1985), and other relevant decisions of this Court – that the mental state of the individual being detained or arrested is irrelevant to a determination as to the reasonableness of a police officer's actions. *Wood*, 203 F.3d 1292; *Pena*, 200 F.3d 1033; *Nelson*, 162 F.3d 990 *Wallace*, 889 F.2d at 582. Reasonable suspicion is the standard that applies to a *Terry* stop, and the Sixth Circuit erred when it held that a probable cause standard applies to officers detaining an individual believed to be armed and suicidal and who poses a danger to the police officers or others.

In addition to the incorrect decision of the Sixth circuit, the Eighth and Ninth circuits have concluded that the mental state of the individual being detained or arrested is relevant to the reasonableness of a police officer's actions. See *Ludwig v. Anderson*, 54 F.3d 465 (8th Cir. 1995); *Deorle v. Rutherford*, 272 F.3d 1272 (9th Cir. 2001).

In short, the decision of the Sixth Circuit Court of Appeals creates a serious circuit split.

B. The Court of Appeals' Decision Undermines this Court's Decision in *Terry v. Ohio* and Others.

The decision of the Sixth Circuit in this case provided an erroneous answer to the important question of whether a heightened burden applies to a police officer's detention of a suicidal suspect posing a danger to himself or others. The four other circuits that have addressed this question, discussed above, have correctly analyzed these issues without finding that the mental state of an individual should become part of the analysis as to whether a police officer's actions are reasonable. Two other circuits, the eight and ninth circuits, have decided along the same lines as the sixth circuit. Therefore, this Petition should be granted to resolve the split between the circuits and make clear that a police officer need not investigate or analyze the mental state of a subject in making his or her decisions related to the arrest or detention of an individual who may pose a danger to the police officers or others before patting down the individual for weapons.

In *Terry v. Ohio*, 392 U.S. 1 (1968), this Court recognized an exception to the warrant clause of the Fourth Amendment which allows police officers to conduct a search of a person for a weapon even in circumstances where the police officer may not even have probable cause to arrest the individual for a crime:

> The crux of this case, however, is not the propriety of Officer McFadden's taking steps to investigate petitioner's suspicious behavior, but rather, whether there was justification for